

**Before the
Federal Communications Commission
Washington, D.C. 20554**

In the Matter of)	
)	
Comcast Cable Communications, LLC)	CSR 7948-E, 7949-E, 7950-E, 7951-E,
)	7952-E, 7953-E, 7954-E, 7955-E
Petitions for Determination of Effective)	
Competition in various Indiana Communities)	
)	

MEMORANDUM OPINION AND ORDER

Adopted: June 3, 2010

Released: June 4, 2010

By the Senior Deputy Chief, Policy Division, Media Bureau:

I. INTRODUCTION AND BACKGROUND

1. Comcast Cable Communications, LLC, hereinafter referred to as “Petitioner,” has filed with the Commission petitions pursuant to Sections 76.7, 76.905(b)(2), 76.905(b)(1) and 76.907 of the Commission’s rules for a determination that Petitioner is subject to effective competition in those communities listed on Attachment A and hereinafter referred to as “Communities.” Petitioner alleges that its cable system serving the communities listed on Attachment B and hereinafter referred to as Group B Communities is subject to effective competition pursuant to Section 623(1) of the Communications Act of 1934, as amended (“Communications Act”),¹ and the Commission’s implementing rules,² and is therefore exempt from cable rate regulation in the Communities because of the competing service provided by two direct broadcast satellite (“DBS”) providers, DirecTV, Inc. (“DirecTV”), and Dish Network (“Dish”). Petitioner additionally claims to be exempt from cable rate regulation in the Communities listed on Attachment C and hereinafter referred to as Group C Communities because the Petitioner serves fewer than 30 percent of the households in the franchise area. The petitions are unopposed.

2. In the absence of a demonstration to the contrary, cable systems are presumed not to be subject to effective competition,³ as that term is defined by Section 623(l) of the Communications Act and Section 76.905 of the Commission’s rules.⁴ The cable operator bears the burden of rebutting the presumption that effective competition does not exist with evidence that effective competition is present within the relevant franchise area.⁵ For the reasons set forth below, we grant the petitions based on our finding that Petitioner is subject to effective competition in the Communities listed on Attachment A.

¹See 47 U.S.C. § 543(a)(1).

²47 C.F.R. § 76.905(b)(2) and 47 C.F.R. § 76.905(b)(1).

³47 C.F.R. § 76.906.

⁴See 47 U.S.C. § 543(l) and 47 C.F.R. § 76.905.

⁵See 47 C.F.R. §§ 76.906 & 907.

II. DISCUSSION

A. The Competing Provider Test

3. Section 623(l)(1)(B) of the Communications Act provides that a cable operator is subject to effective competition if the franchise area is (a) served by at least two unaffiliated multi-channel video programming distributors (“MVPDs”) each of which offers comparable video programming to at least 50 percent of the households in the franchise area; and (b) the number of households subscribing to programming services offered by MVPDs other than the largest MVPD exceeds 15 percent of the households in the franchise area;⁶ this test is otherwise referred to as the “competing provider” test.

4. The first prong of this test has three elements: the franchise area must be “served by” at least two unaffiliated MVPDs who offer “comparable programming” to at least “50 percent” of the households in the franchise area.⁷

5. Turning to the first prong of this test, it is undisputed that these Group B Communities are “served by” both DBS providers, DIRECTV and Dish, and that these two MVPD providers are unaffiliated with Petitioner or with each other. A franchise area is considered “served by” an MVPD if that MVPD’s service is both technically and actually available in the franchise area. DBS service is presumed to be technically available due to its nationwide satellite footprint, and presumed to be actually available if households in the franchise area are made reasonably aware of the service’s availability.⁸ The Commission has held that a party may use evidence of penetration rates in the franchise area (the second prong of the competing provider test discussed below) coupled with the ubiquity of DBS services to show that consumers are reasonably aware of the availability of DBS service.⁹ We further find that Petitioner has provided sufficient evidence of DBS advertising in local, regional, and national media that serve the Group B Communities to support its assertion that potential customers in the Group B Communities are reasonably aware that they may purchase the service of these MVPD providers.¹⁰ The “comparable programming” element is met if a competing MVPD provider offers at least 12 channels of video programming, including at least one channel of nonbroadcast service programming¹¹ and is supported in the petitions with copies of channel lineups for both DIRECTV and Dish.¹² Also undisputed is Petitioner’s assertion that both DIRECTV and Dish offer service to at least “50 percent” of the households in the Group B Communities because of their national satellite footprint.¹³ Accordingly, we find that the first prong of the competing provider test is satisfied.

6. The second prong of the competing provider test requires that the number of households subscribing to MVPDs, other than the largest MVPD, exceed 15 percent of the households in a franchise area. Petitioner asserts that it is the largest MVPD in most of the Group B Communities.¹⁴ Petitioner

⁶47 U.S.C. § 543(1)(1)(B); *see also* 47 C.F.R. § 76.905(b)(2).

⁷47 C.F.R. § 76.905(b)(2)(i).

⁸*See* Petitions at 3.

⁹*Mediacom Illinois LLC et al., Eleven Petitions for Determination of Effective Competition in Twenty-Two Local Franchise Areas in Illinois and Michigan*, 21 FCC Rcd 1175 (2006).

¹⁰47 C.F.R. § 76.905(e)(2).

¹¹*See* 47 C.F.R. § 76.905(g). *See also* Petitions at 4.

¹²*See* Petitions at 5 and Exhibit 4.

¹³*See* Petitions at 3.

¹⁴*Id.* at 5. In the Communities of De Motte, Elkhart County, Hebron, Jefferson, Kingsford Heights, Lake County, Wakarusa and Washington both the Comcast penetration figure and the aggregate DBS figure clearly exceed 15 percent. Comcast argues that it is subject to effective competition because in addition to DBS penetration exceeding

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sought to determine the competing provider penetration in the Group B Communities by purchasing a subscriber tracking report from the Satellite Broadcasting and Communications Association that identified the number of subscribers attributable to the DBS providers within the Group B Communities on a zip code and zip code plus four basis where necessary.¹⁵

7. Based upon the aggregate DBS subscriber penetration levels that were calculated using Census 2000 household data,¹⁶ as reflected in Attachment B, we find that Petitioner has demonstrated that the number of households subscribing to programming services offered by MVPDs, other than the largest MVPD, exceeds 15 percent of the households in the Group B Communities. Therefore, the second prong of the competing provider test is satisfied for each of the Group B Communities.

8. Based on the foregoing, we conclude that Petitioner has submitted sufficient evidence demonstrating that both prongs of the competing provider test are satisfied and Petitioner is subject to effective competition in the Group B Communities.

B. The Low Penetration Test

9. Section 623(l)(1)(A) of the Communications Act provides that a cable operator is subject to effective competition if the Petitioner serves fewer than 30 percent of the households in the franchise area; this test is otherwise referred to as the “low penetration” test.¹⁷ Petitioner alleges that it is subject to effective competition under the low penetration effective competition test because it serves less than 30 percent of the households in the franchise area.

10. Based upon the subscriber penetration level calculated by Petitioner, as reflected in Attachment C, we find that Petitioner has demonstrated the percentage of households subscribing to its cable service is less than 30 percent of the households in the Group C Communities. Therefore, the low penetration test is also satisfied as to the Group C Communities.

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15 percent of the occupied households, the number of Comcast subscribers also exceed 15 percent and the Commission has recognized that in such cases the second prong of the competing provider test is satisfied.

¹⁵Petitions at 6-7.

¹⁶*Id.* at 8.

¹⁷47 U.S.C. § 543(l)(1)(A).

III. ORDERING CLAUSES

11. Accordingly, **IT IS ORDERED** that the petitions for a determination of effective competition filed in the captioned proceeding by Comcast Cable Communications, LLC, **ARE GRANTED**.

12. **IT IS FURTHER ORDERED** that the certification to regulate basic cable service rates granted to any of the Communities set forth on Attachment A **IS REVOKED**.

13. This action is taken pursuant to delegated authority pursuant to Section 0.283 of the Commission's rules.¹⁸

FEDERAL COMMUNICATIONS COMMISSION

Steven A. Broeckaert
Senior Deputy Chief, Policy Division, Media Bureau

¹⁸47 C.F.R. § 0.283.

ATTACHMENT A

CSR(s) 7948-E, 7949-E, 7950-E, 7951-E, 7952-E, 7953-E, 7954-E, 7955-E

COMMUNITIES SERVED BY COMCAST CABLE COMMUNICATIONS, LLC

Communities	CUID(s)
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CSR 7948-E

Bristol	IN0582
Elkhart City	IN0064
Elkhart County	IN0072
	IN1061
	IN1130
Goshen	IN0063
Jefferson	IN0584
Marshall County	IN0073
Middlebury	IN0585
Mishawaka	IN0062
Osceola	IN0242
Plymouth	IN0066
Roseland	IN0065
South Bend	IN0077
St Joseph	IN0043
	IN1062
Wakarusa	IN0586
Washington	IN1132

CSR 7949-E

Fulton County	IN0046
Rochester	IN0076

CSR 7950-E

Fulton County	IN1144
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CSR 7951-E

Elkhart County	IN0733
LaGrange County	IN0136
	IN0734

CSR 7952-E

Cedar Lake	IN0434
Crown Point	IN0747
De Motte	IN0651
Dyer	IN0332
Griffith	IN0225
Hebron	IN0423
Highland	IN0221
Hobart	IN0494
Jasper County	IN0943
Lake County	IN0493
Lake Station	IN0334

Lakes of Four Seasons	IN0554
	IN0555
Lowell	IN0226
Merrillville	IN0495
Munster	IN0408
New Chicago	IN0333
Porter County	IN0657
	IN1098
	IN1099
Schererville	IN0407
St John	IN0435
Whiting	IN0406
Winfield	IN1112

CSR 7953-E

Beverly Shores	IN1095
Burns Harbor	IN1058
Chesterton	IN0252
Dune Acres	IN1016
Ogden Dunes	IN0421
Portage	IN0228
Porter County	IN1057
Porter Town	IN0254
Valparaiso	IN0091
	IN0220

CSR 7954-E

La Porte City	IN0445
New Carlisle	IN0531
	IN1068

CSR 7955-E

Kingsbury	IN0599
Kingsford Heights	IN0598
La Porte County	IN0416
	IN0425
	IN0530
	IN0576
Long Beach	IN0414
Michiana Shores	IN0412
Michigan City	IN0301
Porter County	IN0794
	IN0424
Pines	IN0628
Trail Creek	IN0415

ATTACHMENT B

CSR(s) 7948-E, 7949-E, 7951-E, 7952-E, 7953-E, 7954-E, 7955-E

COMMUNITIES SERVED BY COMCAST CABLE COMMUNICATIONS, LLC

Communities	CUID(s)	CPR*	2000 Census Households	Estimated DBS Subscribers
<u>CSR 7948-E</u>				
Bristol	IN0582	45.08%	539	243
Elkhart City	IN0064	27.98%	20,072	5,617
Elkhart County	IN0072 IN1061 IN1130	33.77%	30,374	10,258
Goshen	IN0063	32.54%	10,675	3,474
Jefferson	IN0584	39.69%	2,154	855
Middlebury	IN0585	42.60%	1,068	455
Mishawaka	IN0062	21.63%	20,248	4,380
Osceola	IN0242	40.19%	714	287
Plymouth	IN0066	40.51%	3,838	1,555
Roseland	IN0065	18.97%	311	59
South Bend	IN0077	21.84%	39,244	8,572
St Joseph	IN0043 IN1062	28.30%	34,252	9,693
Wakarusa	IN0586	43.02%	595	256
Washington	IN1132	34.70%	2,614	907
<u>CSR 7949-E</u>				
Rochester	IN0076	28.11%	2,757	775
<u>CSR 7951-E</u>				
Elkhart County	IN0733	33.77%	30,374	10,258
<u>CSR 7952-E</u>				
Cedar Lake	IN0434	41.33%	3,394	1,403
Crown Point	IN0747	45.44%	7,824	3,555
DeMotte	IN0651	53.30%	1,297	691

Dyer	IN0332	48.97%	4,805	2,353
Griffith	IN0225	27.12%	6,728	1,825
Hebron	IN0423	55.81%	1,410	787
Highland	IN0221	31.92%	9,636	3,076
Hobart	IN0494	37.74%	9,855	3,719
Lake County	IN0493	42.24%	13,725	5,797
Lake Station	IN0334	29.47%	5,041	1,486
Lakes of Four Seasons	IN0554 IN0555	45.41%	2,506	1,138
Lowell	IN0226	53.58%	2,697	1,445
Merrillville	IN0495	35.52%	11,678	4,148
Munster	IN0408	32.23%	8,091	2,608
New Chicago	IN0333	36.56%	826	302
Schererville	IN0407	42.87%	9,660	4,142
St John	IN0435	57.68%	2,800	1,615
Whiting	IN0406	19.85%	2,091	415
Winfield	IN1112	46.09%	692	319
<u>CSR 7953-E</u>				
Beverly Shores	IN1095	19.70%	340	67
Burns Harbor	IN1058	29.04%	303	88
Chesterton	IN0252	31.22%	4,039	1,261
Dune Acres	IN1016	43.56%	101	44
Ogden Acres	IN0421	34.34%	562	193
Portage	IN0228	34.70%	12,746	4,422
Porter Town	IN0254	30.86%	1,844	569
Valparaiso	IN0091 IN0220	30.18%	10,867	3,280

CSR 7954-E

La Porte City	IN0445	35.51%	15,606	5,542
New Carlisle	IN0531	48.36%	608	294

CSR 7955-E

Kingsbury	IN0599	27.77%	90	25
Kingsford Heights	IN0598	58.98%	495	292
La Porte County	IN0416 IN0425 IN0530 IN0576	35.51%	15,606	5,542
Long Beach	IN0414	23.15%	661	153
Michiana Shores	IN0412	22.22%	162	36
Michigan City	IN0301	19.93%	12,550	2,502
Pines	IN0628	20.18%	332	67
Trail Creek	IN0415	19.63%	932	183

*CPR = Percent of competitive DBS penetration rate.

ATTACHMENT C

CSR(s) 7948-E, 7949-E, 7950-E, 7951-E, 7952-E, 7953-E, 7955-E

COMMUNITIES SERVED BY COMCAST CABLE COMMUNICATIONS, LLC

Communities	CUID(s)	Franchise Area Households	Cable Subscribers	Penetration Percentage
Elkhart County	IN0072 IN1061 IN1130 IN0733	30,374	8,837	29.09%
Fulton County	IN0046 IN1144	4,525	247	5.46%
Jasper County	IN0943	6,432	783	12.17%
LaGrange County	IN0136 IN0734	9,194	93	1.01%
Marshall County	IN0073	8,867	474	5.35%
Porter County	IN0657 IN1098 IN1099 IN1057 IN0794 IN0424	21,427	2,121	9.90%
Washington	IN1132	2,614	666	25.48%